

of Roy French, ¶6. The second activity encompasses all of the remaining steps necessary to produce the final white pages and yellow pages product, including marketing, solicitation of advertisements, graphics, printing, distribution, etc. All of these latter functions can be and have been performed by non-utilities, and are unrelated to the provision of regulated monopoly basic telephone service. They are what comprises the "publishing" of a directory. A number of independent directory publishers, who were not also utility providers of local exchange service, have published directories in the territory of U S WEST's BOCs by engaging in these non-utility, non-monopoly activities, some even prior to the January 1, 1984 divestiture. These directories were in addition to, and in some cases in competition with, the directories published by three BOCs.

It would be virtually impossible for a competitive directory publisher to perform the publishing functions outlined above without its being able to obtain use of the up-to-date basic listings as they are now being compiled by the BOCs for their exchanges. At this time only the BOCs, as part of their service order process, have the access to the complete and current subscriber information necessary to compile such listings. See Affidavit of Roy French, ¶7. The BOCs have control over access to what is known in antitrust law as a "bottle neck" or an "essential facility" -- that is, the listings, without access to which competitors in the directory publishing business would not be able to compete. Through the use of such a "bottle neck", the BOCs would have the ability improperly to leverage their regulated monopoly over the provision of basic telephone service into the unregulated, competitive directory publishing

market. See, e.g., Otter Tail Power Co. v. United States, 410 U.S. 366(1973); Six Twenty Nine Productions, Inc. v. Rawlins Telecasting, Inc., 365 F.2d 473 (5th Cir. 1966). It would be no different than the improper leveraging of the monopoly power of the local telephone network into the competitive arena of customer premises equipment manufacture through the denial of interconnection, See n. 2, supra; by refusing to license to competitive publishers the use of current basic listings uniquely compiled in the course of the BOCs' provision of utility service, the BOCs could use their monopoly power to prevent or at least impede competition in publishing.

U S WEST recognized that this potential antitrust problem was exacerbated by the structural setting in which directories were published in its three BOCs. Both the monopoly function -- the compilation of basic listings -- and the competitive function -- the publishing of directories -- were performed within the same companies. The ability, if not the incentive, improperly to leverage the monopoly listing power into the competitive publishing market was clearly there, just as it had been for AT&T during the period addressed by the federal antitrust case. While the structural changes wrought by the MFJ would generally remove the ability and incentive from the old Bell System to do such leveraging (by structurally separating monopoly and competitive functions between the RHCs and the AT&T), the MFJ did not do the same for directory publishing. As described earlier, publishing yellow pages, despite its being a competitive business, was to be placed on the monopoly (RHC) rather than the competitive (AT&T) side of the fence.

U S WEST decided to address this antitrust vulnerability in two ways. The first way was structural. The bottleneck function of basic listing compilation would continue to be accomplished from within the BOCs, but the competitive directory publishing functions would be performed by separate subsidiaries. U S WEST created LANDMARK Publishing Company ("LANDMARK") as a publishing holding company through which U S WEST's directory publishing operations would be conducted. LANDMARK, in turn, has a number of subsidiaries including U S WEST Direct, which publishes directories primarily in territories served by the BOCs owned by U S WEST, and Trans Western Publishing, which publishes directories elsewhere in the United States (and which is headed by Roy French, who previously submitted an affidavit in this action).

Through this structure, U S WEST hoped to replicate the separation between monopoly and competitive functions imposed by the MFJ, and thereby show its intention to avoid antitrust liability by refraining from improper leveraging of its local telephone monopoly into the competitive directory market. It is clear, however, that structural change alone (through the establishment of separate subsidiaries) is not in and of itself enough to forestall antitrust liability. This is because, as the U.S. v. AT&T antitrust court pointed out, "[a] separate subsidiary does not eliminate economic incentives for anticompetitive conduct; it is simply a method of revealing intracompany transactions so that regulators may more effectively prevent cross subsidization and other improper behavior." MFJ, supra, 552 F. Supp. at 193 n. 251. In other words, structural separation is a safeguard but not a guarantee against improper anticompetitive behavior.

Accordingly, U S WEST took a second step to make sure that anticompetitive conduct would not occur. It made a policy decision and commitment, formally enunciated in a January 20, 1986 letter to the U. S. Department of Justice, a copy of which is attached hereto as Exhibit B. In that letter, U S WEST committed:

that any direct or indirect transfer of subscriber information from its regulated telephone companies to its print media subsidiary will be made on the same terms and conditions to all who wish to obtain it.

While this letter was submitted to the Justice Department as part of U S WEST's effort to obtain approval to enter into the competitive print media and paper products business, it reflects a broader policy and current practice that any and all transfers of basic subscriber listing information from U S WEST's BOCs to any of U S WEST's subsidiaries (including its publishing subsidiaries) should also be made available to those subsidiaries' competitors on the "same terms and conditions." See Affidavit of Roy French, ¶8.

U S WEST's corporate decisions to separate into different subsidiaries its monopoly listing and its competitive directory lines of business, and to commit to providing services such as listings to competitive directory publishers on equal terms and conditions as it would to its own publishing subsidiaries, taken together, reflect its strongly-held belief that any attempt to use the telephone-service monopoly -- of which the listing function is currently a part -- to obtain a monopoly in the competitive directory publishing market is inappropriate. A directory publisher right now has no other practical source for the up-to-date and complete listing information compiled by the BOCs in the course of their provision of monopoly local exchange service. Affidavit of Roy French, ¶7. A truly competitive directory cannot realistically be published without such listing information.

Today, an RHC or BOC can easily ensure its domination of a directory publishing market by refusing to make current listings available to competitive publishers in that market. Dominance so obtained would be, in U S WEST's view, wholly improper and potentially in violation of the antitrust laws.⁴

CONCLUSION

U S WEST and LANDMARK understand that the type of conduct leading to the U.S. v. AT&T antitrust suit is capable of repetition in the directory publishing industry. It does not have to be repeated, however. By making a commitment not to leverage its BOCs monopoly power over local telephone service into the competitive market for directories, and by implementing that commitment through structural change and through the present policy and practice of making basic listings available to all comers on equal terms and conditions, U S WEST believes it, and any RHC that takes a similar stance, can prevent the occurrence of anticompetitive behavior in the directory publishing market.

⁴ U S WEST also believes that it would be improper for a telephone company to try to restrict directory competition by claiming a violation of copyright in using basic listing information contained in existing directories as a source for sales leads. For example, Trans Western Publishing, a LANDMARK subsidiary, uses telephone company-sponsored directories as a source document for advertising sales leads through "entering" information into computer data bases. Affidavit of Roy French, ¶¶10, 11. Such a use of an existing directory does not, in U S WEST's view, involve the copying of any copyrightable information and would in any event be a fair use.

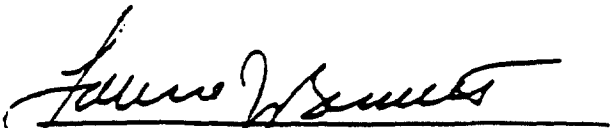
Respectfully submitted,

OF COUNSEL:

J. Walter Hyer III, Esq.
LANDMARK Publishing Company
10375 E. Harvard
Denver, Colorado 80231
(303) 696-2940

Fowler, White, Burnett, Hurley
Banick & Strickrout, P.A.
City National Bank Building
25 W. Flagler Street
Miami, Florida 33130

By:


Laurie J. Bennett, Esq.
2500 South Havana
Aurora, Colorado 80014
(303) 337-8197

ATTORNEY FOR U S WEST, INC. and
LANDMARK PUBLISHING COMPANY

WILSON *Telephone*
COMPANY

PAUL GRAUER, President
PAUL GRAUER, Exec. Vice-Pres.
CHARLES GRAUER, Vice-Pres. Plant

Incorporated
WILSON, KANSAS
67490

TELEPHONE
913-658-2111
TOLL FREE
KANSAS ONLY
800-432-7647

WILSON
LUCAS
SYLVAN GROVE
Exchanges: TIPTON
BROOKVILLE
HUNTER
DENMARK

March 5, 1986

Ridenour and Knobbe
P O Box 808
Cimarron, KS 67835

RE: Feist Area-Wide Directories
License Agreements

Dear Mr. Knobbe:

In response to your letter dated February 26, 1986. The "Kansas Central Regional Telephone Directory" is our own directory so we have not licensed our listings to anyone else. Furthermore, we still have no intentions of selling our directory listings to anyone.

Sincerely,

WILSON TELEPHONE CO., INC.

Paul Grauer
Paul Grauer, President

PG:st

TRIPMENT
GUDI

PRESENTATION TO MR. CHARLES FOSTER

DEPOSITION
EXHIBIT
17
1985

PLAINTIFF'S
EXHIBIT
T108
CA2-88-218

WHITE PAGES PLANS

September 28, 1988

RESTRICTED-CONFIDENTIAL INFORMATION
subject to Protective Order, CA2-88-2
CA2-89-003, U.S.D.C., N.D. Tex.,
Amarillo Div.

100051

Mr. Moser

DIRECTORY LISTINGS PRODUCT LINE
FOR
DIRECTORY PUBLISHERS

EFFECTIVE 1-1-86

A. Paper Product

Listings from the "Directory on the Street" are priced at .05¢ per listing and are taken from the current directory. Specific NNX's should be selected. This contract is for a one-year period.

B. Magnetic Tape Product

The "Directory on the Street" is available in magnetic tape format if ordered 30 days prior to that particular directory's close date. Data is furnished as of the directory close date only. We do not maintain this file or keep a library of tapes. Listings should be selected by specific NNX's. Listings are priced at .15¢ each. This contract is for a one-year period.

C. Update Service

This service is provided on Magnetic Tape or via T-TRAN on a daily or monthly basis. The publisher selects listings by NNX's for either business or residence, or both. The initial load database is provided for \$500.00. Update transactions are .30¢ each and include such changes as name, address, telephone number, and other information contained in the file. Documentation for this service is available. This contract is for a three-year period.

SWBT
RESTRICTED

100052

MISSOURI
1990 DIRECTORY SERVICES
COST STUDY

COST SUMMARY

<u>SERVICE</u>	<u>TOTAL MONTHLY COST</u>	<u>TOTAL NONRECURRING COST</u>
Business Listings		
Residence Listings		
Foreign Listings	\$9,151.02	
Labels	\$2,503.64	
Specialty Listings		\$3,896.70
Photocomposition Pages	\$ 262.84	
Book on Street for Republication	No incremental Cost	
Repros	This service is considered a duplication of Photocom- position Pages.	
End of Run	\$ 39.78	
T-Tran		\$2,338.02
File Transfer System		\$3,507.03
9 Track Tape Production	\$ 272.80	\$1,169.01
S9900	\$ 796.27	
Invoice	\$ 306.57	
Bill Payment	\$3,158.97	
Revenue & Expense Tracking	\$1,196.64	
Cost Accountability		
Documentation & Audit	No incremental Cost	

* Cost per listing equates to less than \$.01, therefore
market value is the determining factor.

SWBT
RESTRICTED

100053

C O N T R A C T R E V I S I O N S

PAYMENT PLAN REVISION

PRICE RESTRUCTURE

- OK {
1. Sale of the Directory for Republication
 2. Elimination of output tape of "Directory on Street"
 3. Two-Tier pricing of Listings for Publication
 - Business \$.60/LISTING
 - Residence \$.50/LISTING

A portion of this page has been redacted because it dealt with highly confidential information pertaining to future directory listing information offerings under consideration by the Defendant and, therefore, this portion of the document is not responsive to any of the Plaintiff's requests.

- OK {
5. Transmission Facilities
 - Tapes \$ 25.00
 - Dataset output \$400.00/MO
 6. Consultant Services \$100.00/HR

NOTE: Prices subject to change based on Product Management review.

SWBT
RESTRICTED

E N H A N C E D S E R V I C E S

SPECIALTY LISTINGS

NEW CONNECTS

DISCONNECTS

ELECTRONIC LISTING PROVISIONS

LABELS (Delivery Information)

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100054



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

Vol.

WASHINGTON, THURSDAY, FEBRUARY 6, 1996

House of Representatives

REPORTS OF COMMITTEE

SPEECH OF

HON. BILL PAXON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 1, 1996

Mr. PAXON. Mr. Speaker, I want to address section 702 of the conference report that adds a new section 222(e) to the Communications Act which would require that subscriber list information be provided to independent telephone directory publishers on nondiscriminatory and reasonable rates, terms, and conditions. This is a simple requirement to protect an area of telecommunications where there has been competition for more than a decade, but where service providers have used pricing and other terms to try to limit that competition. Now we are prohibiting such anticompetitive behavior.

This provision is one of those covered by section 257 of the conference report that requires that the FCC make rules that identify and remove barriers to entry for companies involved with providing telephone and information services.

Since the FCC will soon be considering how to interpret the language in section 222(e) to prevent future problems with the sale of subscriber list information to independent publishers, I would like to emphasize one key point. I have consistently sought to assure that in determining what constitutes a reasonable rate under this bill, the most significant factor should be the incremental cost of delivering that listing to the requesting party.

I appreciate this opportunity to clarify this important provision.

04-04-96 12:55PM FROM MACGREGOR PUBLISH CO

F04



WHIDBEY TELEPHONE COMPANY

DAVID C. HENNY
PRESIDENT AND GENERAL MANAGER

April 3, 1996

8747 EAST STATE HIGHWAY 188
LANOUEY, WASHINGTON 98040
TELEPHONE (206) 381-1111
FAX (206) 381-8116

BY TELECOPIER AND FIRST CLASS MAIL

Mr. Mac MacGregor, Publisher
MacGregor Publishing Company
1583 Memorial Highway
Mount Vernon, WA 98273-9721

Dear Mr. MacGregor:

This is in reply to your letter, dated March 18, 1996, which we received on March 20, 1996, relating to directory listings for subscribers to whom Whidbey Telephone Company provides telephone exchange service. Your letter states that you expect a reply within 15 days of the request.

As you know, the relationship between local exchange telecommunications companies and unaffiliated publishers of subscriber directory listings exists in a new environment - one defined, at least in part, by the Telecommunications Act of 1996. This legislation is quite recent, and we are in the process of attempting to identify how best to comply with the requirements of the statute, recognizing that portions of the statute may not survive judicial review.

At present, there would seem to be some uncertainty as to what is required by new subsections 222(e) and (f) of the Communications Act of 1934, as amended. For example, from the Congressional Record excerpt of Representative Paxon's remarks that was enclosed with your letter, it appears that the standards for the furnishing of subscriber listings are expected to be further defined by the Federal Communications Commission ("FCC") - a process that has not yet occurred.

Moreover, it is evident from your letter that different stakeholders read the new statute differently. For example, your letter states that the new law mandates that we furnish you with "complete, accurate, and up-to-date local telephone service subscriber listings on a timely basis." The statute, however, makes no use of the terms "complete", "accurate" or "up-to-date". Indeed, subsection 222(f)(3)(B) confines the definition of "subscriber list information" to the types of information enumerated in subsection 222(f)(3)(A). "that the carrier or an affiliate has published, caused to be published, or accepted for publication. . . ." Accordingly, it is our understanding that such subscriber list information as we might provide would be furnished on an "as is" basis, and that we would not warrant or otherwise guarantee its completeness or accuracy or whether it is up-to-date.

APR - 4 1996

04-04-96 12:55PM FROM MACGREGOR PUBLISH CO

PCE

WHIDBEY TELEPHONE COMPANY
2747 EAST STATE HIGHWAY 626
LANGLEY WASHINGTON 98026

Mr. Mac MacGregor, Publisher
MacGregor Publishing Company
April 3, 1996
Page 2

These would be matters that your firm, as publisher, would be responsible for confirming to the extent you deem appropriate.

Another apparent point of difference relates to the price that we may appropriately charge for furnishing subscriber list information. In this regard, your letter states in part:

"This new law is very specific. The service is to be provided on a non-discriminatory basis at reasonable rates. For clarification purposes regarding what is reasonable, the determining factors are based on your cost, or incremental costs, to provide such a service with a reasonable mark-up and profit to you."

We do not find in the statute, which you describe as being "very specific", any requirement that "reasonable" rates be defined in the manner you suggest. Nor do we find any such clarification in the Conference Committee report that accompanied the final legislation. We do appreciate the two excerpts from the Congressional Record that accompanied your letter, both of which make mention of the incremental cost method. However, we note with particular interest the following comment by Representative Paxon in the excerpt of his remarks that you furnished:

"Since the FCC will soon be considering how to interpret the language in section 222(e) to prevent future problems with the sale of subscriber list information to independent publishers, I would like to emphasize one key point. I have consistently sought to assure that in determining what constitutes a reasonable rate under this bill, the most significant factor should be the incremental cost of delivering that listing to the requesting party."

Representative Paxon's comment suggests at least two things of significance. The first, which I have noted above, is that implementation of new subsection 222(e) may be dependent upon further FCC interpretation. Second, it would appear that during the evolution of the bill, Representative Paxon evidently sought to have the incremental cost standard incorporated into the legislation, and his view found its way into neither the final version of the bill nor the Conference Committee report. While he may personally have favored the incremental cost standard, it would appear that his view may not have prevailed.

04-04-96 12:55PM FROM MACGREGOR PUBLISH CO

PG

WHIDSEY TELEPHONE COMPANY
2747 EAST STATE HIGHWAY 525
LANGLEY, WASHINGTON 98260

Mr. Mac MacGregor, Publisher
MacGregor Publishing Company
April 3, 1996
Page 3

If we are to respond more fully to your March 18, 1996, letter, there is some additional information that we shall need from you. Your letter does not indicate the geographic area for which you desire subscriber list data. As you know, we provide local exchange telecommunications service in Island County and Whatcom County, both of which are among those listed in your letterhead. Do you desire listings for Island County, Whatcom County, or both?

Your letter also does not indicate whether you prefer to receive the subscriber list information in magnetic or paper format. To the extent the data is to be provided by us, we would expect to deliver it on paper in telephone number sequence, and those are the costs that we are endeavoring to develop. If you have a different requirement, please let me know. However, we do not have a large staff to deal with requests such as yours. Accordingly, if you wish to have the data furnished in magnetic format, or in a different paper format than I have indicated, we will expect your firm to reimburse us for our costs in working with you to develop and price an alternative proposal, regardless of whether or not you ultimately avail yourself of that alternative.

We look forward to an early response from you, so that we may present you with a timely proposal, if otherwise appropriate. However, I must add that while we are willing to move forward in anticipation of being able to supply you with the requested information in a timely fashion, we cannot, at this time, commit to providing you with the information you seek without knowing whether new subsections 222(e) and (f) are, or in the relevant time frame will be, subject to judicial action that may void, limit or otherwise affect their implementation and without knowing what action, if any, the FCC is taking, or planning on taking, with respect thereto. We are trying to find out more about these matters, but perhaps if you have information concerning them, you would be willing to share it.

Very truly yours,



David C. Henny
President and General Manager



GTE Telephone
Operations

National Directory Center
MC: VA404NDC
Route 3, Box 40 Walnut Rd.
Warsaw, VA 22572

March 29, 1996

Dolores E Wagner
White Directory Publishers Inc
1945 Sheridan Drive
Buffalo NY 14223

Dear Ms. Wagner:

In response to your letter dated March 25, 1996, we will be providing an update service. All pricing, formats, etc. are currently being developed by GTE's Headquarters Operation. We are unable to say at this time when all matters will be resolved but we do expect resolution very shortly.

Please feel free to contact the GTE National Directory Center periodically to check on the status of updates, products, etc. We look forward to working with you in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Roberts".

R. L. Roberts
NDC Manager



Carolina Telephone
Centel-North Carolina
Centel-Virginia
United Telephone-Southeast

Elizabeth A. Denning
Attorney

March 22, 1996

Mr. Rex D. Peters, President
Beach Book
Post Office Box 1500
Kill Devil Hills, North Carolina 27948

Dear Mr. Peters:

Your March 14, 1996 letter to Shelby Blevins was referred to Carolina Telephone and Telegraph Company's Legal Department.

Carolina Telephone's directory listing fees are in compliance with the Telecommunications Act of 1996 as subscriber list information is provided "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

Carolina Telephone does not currently have the technical capability to provide subscriber listing updates, therefore, at this time a publisher must "buy the whole list". We anticipate implementing a new system by next year so that Carolina Telephone will have the capability to provide subscriber listing updates to publishers requesting the same.

Shelby Blevins is processing your request for directory listings. Please do not hesitate to contact either Ms. Blevins or myself if you have any questions relating to this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Elizabeth A. Denning".

Elizabeth A. Denning

Copy: Shelby Blevins

#5898

A handwritten note in cursive script that says "Carla read, 4/11".

14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900
Telephone: (919) 554-7808 Fax: (919) 554-7913

